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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,452	12/15/2003	Conrad S. Mikulec	CM04	1451
27797	7590	02/02/2006	EXAMINER	
RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072			BARNEY, SETH E	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 02/02/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/707,452
Filing Date: December 15, 2003
Appellant(s): MIKULEC, CONRAD S.

MAILED

FEB 02 2006

Group 3700

Richard D. Fuerle
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 19, 2005 appealing from the Office
action mailed August 9, 2005

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claim 4 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,979,572 to Mikulec has been withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,979,572

Mikulec

12-1990

(9) Grounds of Rejection

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 8, 9, 14, 15, 17, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,979,572 to Mikulec.

Regarding claim 1 and 17, Mikulec discloses a fire extinguishing actuator having:

-an elongate body made of single piece (not expressly numbered). All of the claimed structure is located within this single piece. The single piece is the crosshatched part located inside of numbered crosshatched piece (40). While the overall apparatus of Mikulec is made of several pieces, the non-labeled crosshatched piece can be taken to be the elongate body and therefore still reads on the instant application as currently claimed. See Figure 3.

-a longitudinal chamber that extends through the body, for holding a ram (101) and a spring (108) for propelling the ram. See Figure 3.

-a first transverse aperture that joins the chamber for holding a trigger (37) that releases the spring. See Figure 3.

-a second transverse aperture that joins the chamber at about a right angle for holding a member that moves in response to movement of the ram, where movement of the member activates the release of the composition from the cylinder. See Figure 3 and column 3 lines 41 to 56.

Regarding claim 2, a microswitch (124) is attached to one end of the chamber. See Figure 3.

Regarding claim 3, a cable (140) that slides in a sheath (126) and is activated by the ram is attached at one end of the chamber. See Figures 2 and 3.

Regarding claim 5, a fusible link (36) is attached between the trigger and on end of the body. See Figure 1.

Regarding claim 6, the member is a plunger (41) that pierces a seal on the cylinder. See Figure 3.

Regarding claim 8, both apertures are circular in cross section. See Figures 2 and 3.

Regarding claim 9, the actuator includes a ram (101), a compressed spring (108) within the longitudinal chamber, a trigger (37) within the first aperture, and a member (41) within a second aperture.

Regarding claims 14 and 18, the system is a fire extinguisher.

Regarding claims 15 and 19, the fire extinguisher is mounted in a hood. See Figure 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-13, 16, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,979,572 to Mikulec.

Mikulec discloses all of the limitations set forth in the claims (as aforementioned in the rejections of claims 13, 5,6, 8, 9, 14, 15, 17, 18, and 19 above) except for the main body being an extruded piece of metal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to extrude the elongated body part in order to easily and cheaply produce a single long profile piece.

(10) Response to Argument

Applicants arguments in regards to claims 1-6, 8, 9, 14, 15, 17, 18, and 19 with respect to the prior art not being made of a single piece is not persuasive. While the Examiner admits that Mikulec is indeed made of several pieces, all of the claimed structure is in fact located in a single piece. The single piece is the crosshatched part located inside of numbered crosshatched piece (40). While the overall apparatus of Mikulec is made of several pieces, the non-labeled crosshatched piece can be taken to

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be the elongate body and therefore still reads on the instant application as currently claimed. See Figure 3.

Applicant's arguments, with respect to claim 4 have been fully considered and are persuasive. The prior art of record does not show a microswitch or cable that is activated by the ram at each end of the chamber. The rejection of claim 4 has been withdrawn.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

The Examiner notes that in the appeal brief filed October 19, 2005 both the Evidence Appendix and the Related Proceedings Appendix are missing. The Examiner accepts the brief and has assumed that the appellant meant to include both appendixes with a statement of "NONE" in accordance with MPEP 1205.03 [R-3].

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Seth Barney



Conferees:

David Scherbel



Justine Yu

